

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RICHARD J. HILL,

Plaintiff,

v

JUSTIN WONCH,

Defendant.

U.S. District Judge:

Hon. Hala Y. Jarbou

U.S. Magistrate Judge:

Maarten Vermaat

Case No: 2:19-cv-159

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DEFENDANT'S PROPOSED CAUTIONARY JURY INSTRUCTION

Defendant Justin Wonch through his attorneys, Kitch Drutchas Wagner Valitutti & Sherbrook, requests the following Cautionary Instruction be put to the jury panel. This was sent to plaintiff's attorney on July 6, per the Court's Case Management Order, for inclusion in the joint filing, but was not included.

Respectfully submitted,

KITCH DRUTCHAS WAGNER
VALITUTTI & SHERBROOK

Dated: July 7, 2022

By: /s/ M. Sean Fosmire
M. Sean Fosmire

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DEFENDANT'S REQUESTED CAUTIONARY INSTRUCTION

I want to caution you, in listening to testimony from this witness or others regarding the language of policies that have been adopted by the Forsyth Township Police Department, and in general about claims that Officer Wonch acted negligently on March 22, 2019:

Standards and policies may be considered by you, but they do not define the constitutional boundaries that limit what a police officer is permitted to do under law in using reasonable force to effectuate an arrest.

A mistake or error on the part of the police officer which is not certain or expected to result in a constitutional violation of the rights of a subject cannot form the basis for a claim against him under §1983. A police officer does not violate a person's constitutional rights simply by an error or an act of negligence. It is only the use of force that exceeds the limits of proper force, as they are found to exist by you, that can form the basis of a finding in favor of the plaintiff under these circumstances.

Based on the court's ruling in ECF 103, PageID.787-788, without waiver of defendant's position that a curative instruction is unlikely to be sufficient.